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C O N F I D E N T I A L SECTION 01 OF 03 PHNOM PENH 000684

SENSITIVE
SIPDIS

DEPARTMENT FOR EAP AND DRL

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TAGS: [PHUM](#) [PREL](#) [PGOV](#) [CB](#)

SUBJECT: UNSRSG FOR HUMAN RIGHTS IN CAMBODIA: CAMBODIANS
FRUSTRATED BUT "WINDOW STILL OPEN"

REF: A. PHNOM PENH 444

[1](#)B. 07 PHNOM PENH 1514

Classified By: Political Officer Janet Deutsch for reasons 1.4 (b) and (d).

[1](#)1. (C) Summary: An upcoming U.N. Human Rights Council (HRC) vote on whether to extend the mandate of the UN Special Representative of the Secretary-General for human rights in Cambodia (SRSG) prompted the recent visit of Japanese MFA officials from Tokyo and Geneva with the delegation reporting that their attempts to discuss an extended Special Procedure mandate failed. During August 14 discussions, RGC Human Rights Committee Director General Om Yientheng was said to have been hung up on his dislike for current SRSG Yash Ghai, whom Cambodian government officials have criticized for being too harsh and inaccurate in his assessments of human rights in Cambodia (Refs A and B). Cambodian MFA Secretary of State Ouch Borith also expressed an aversion to Yash Ghai but the Japanese delegation reported that with Ouch Borith it seemed that the "window is still open" for a continued Cambodia country mandate. Japanese MFA Geneva-based Counselor Osamu Yamanaka indicated that Japan would be supportive of changing the mandate to a Special Rapporteur role explaining that this change would be in line with the HRC's general movement toward standardizing country-specific mandates; would help the Cambodians make a break with the mind-set of past bad relations with SRSGs; and would set the stage for Cambodia to have some input in the choosing of the individual to fulfill the role thereby giving the Cambodian government some ownership of the process and outcome. Japan will also support the establishment of milestones that would determine the end point of a Cambodia country-specific mandate in order to give the RGC a sense that there is "a light at the end of the tunnel." Post believes the current human rights situation in Cambodia necessitates a continued country-specific mandate, and that a Special Rapporteur role and a new person to fill it may be the fresh start needed for a constructive mandate. However, the benchmarks that the Japanese propose need to be reviewed to determine whether they would address the most serious Cambodia human rights concerns. End summary.

[1](#)2. (C) During an August 15 meeting with Emboffs, Japanese MFA Director of Human Rights and Humanitarian Affairs Division Mitsuko Shino and Geneva-based Counselor Osamu Yamanaka reported that they held extensive meetings with Cambodian MFA Secretary of State Ouch Borith and Human Rights Committee Director General Om Yientheng discussing the September 2008 U.N. HRC vote on whether to extend the SRSG mandate for Cambodia. Both Cambodian government officials expressed to the Japanese delegation their disdain for the current SRSG Yash Ghai who has been publicly criticized by Prime Minister Hun Sen and other Cambodian government

officials for being too harsh and inaccurate in his reporting on the Cambodian human rights situation. Shino recounted Om Yientheng's emotional and frustrated fixation on SRSG Yash Ghai when the specific topic of the future of the SRSG mandate was broached and said that, as a result, the conversation about the RGC's official position on the mandate did not go further. However, Shino said she believes that the Cambodians have a sense of resignation about the SRSG mandate, to the point that she believes that the Cambodians may not do much to oppose it. In particular, Shino said she felt that Ouch Borith was leaving the window open for the extension of the mandate though he did not expressly state this.

13. (SBU) Director Mitsuko Shino told Emboffs that the RGC officials stated Cambodia is not acknowledged enough for its human rights progress, especially in light of its standing as a young democracy. They said they believe Cambodia is doing the best that it can, and are frustrated that too much is asked of Cambodia. Yamanaka said that Ouch Borith talked about examples of advancement such as the RGC's willingness to discuss corruption issues and the progress of the Khmer Rouge Tribunal (KRT). Yamanaka said that the RGC was willing to take the Japanese delegation on a visit to an area of one of the more contested land cases, and that Ouch Borith was enthusiastic about Cambodian police taking up the FBI's offer of investigation assistance in the recent killing of opposition newspaper journalist Khem Sambo.

14. (C) Shino indicated that the Japanese government is in favor of changing the SRSG mandate to one of a special rapporteur. SRSGs and special rapporteurs generally have the

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same monitoring and reporting mandates, and are both considered to fall into the group of HRC Special Procedures that also includes independent experts. However, SRSGs are appointed by the Secretary-General but for rapporteurs the appointment procedure is carried out by the HRC. For special rapporteurs, the Office of the High Commissioner for Human Rights (OHCHR) prepares an eligible candidate list and submits it to an HRC consultative group for shortlisting; the consultative group presents the shortlist to the HRC president at least one month before the beginning of the session in which the HRC would consider the selection of the mandate holder; the president then presents the shortlist to the HRC; the HRC reviews candidates and appoints a mandate holder. (Note: Nine countries and territories have special procedure mandates: Burundi, Cambodia, DPRK, Haiti, Liberia, Burma, the "Palestinian territories occupied since 1967" (as the rapporteur mandate is named by the HRC), Somalia, and Sudan. Of these, Cambodia has the only SRSG mandate; four have special rapporteur mandates; four have independent expert mandates. In 2007 and 2008, the country mandates of Belarus, Cuba and the Democratic Republic of Congo were discontinued. End note.)

15. (C) Counselor Yamanaka stated that Cambodia could have some involvement with the identification process for a special rapporteur which may help create RGC buy-in and give the RGC some ownership of the mandate. He added that the change to a rapporteur mandate could help the Cambodian government make a break with the past, giving the Cambodians a fresh start for a constructive relationship. Additionally, Yamanaka stated that the change from an SRSG to a rapporteur would be in line with the HRC's current movement to standardize country-specific mandates. He also expressed support for a special rapporteur mandate that would be a "simplified version" of the current SRSG resolution adopted in 1993. The 1993 resolution is shorter than two and half pages but contains lines about Cambodia's transitional period and the United Nations Transitional Authority in Cambodia (UNTAC) mandate, and establishes the presence of the OHCHR Cambodia Country Office, then called the U.N. Center for Human Rights. The portion of the resolution establishing the SRSG is five lines long, detailing the following

responsibilities of the SRSG: a) to maintain contact with the Government and people of Cambodia; b) to guide and coordinate the U.N. human rights presence in Cambodia; c) to assist the Government in the promotion and protection of human rights and c) to report to the General Assembly and Commission on Human Rights. Yamanaka stated that the Japanese government would support the "de-linking" of the issues of the special procedure mandate for Cambodia and the OHCHR Cambodia Office.

¶16. (C) Yamanaka stated that the Japanese government is in favor of setting benchmark goals for the Cambodian government, the achievement of which would signal the end of the necessity for a Cambodia country mandate on human rights. Specifically, Yamanaka suggested benchmarks might be the successful conclusion of the Khmer Rouge Tribunal, and benchmarks based on the principles of the planned ASEAN Human Rights Mechanism.

¶17. (C) According to a OHCHR Cambodia Office source, if there is indecision or a lack of consensus on the part of the international community come the time of the Cambodia mandate vote in September, it is possible that the HRC may vote to extend the current SRSG mandate for another year. If that is the case, as an appointee of the Secretary-General, the decision as to whether Yash Ghai goes or not is essentially up to Yash Ghai himself. Yamanaka stated that he has heard that Yash Ghai has been mostly focused on his constitutional consultation work in Nepal and has not been in regular contact regarding Cambodia. There are unconfirmed reports that he may wish to resign from his SRSG role but he has not yet stated his intentions. There was even some speculation that Yash Ghai may not be able to personally attend the September HRC session to present his report due to his work in Nepal. If this is the case, it may be a signal of his further disengagement with the appointment.

Comments

¶18. (C) We agree with many in the Cambodia donor community that Yash Ghai is not constructive as the SRSG on human rights in Cambodia. His presence as SRSG is counter-productive; for as long as Yash Ghai serves as SRSG,

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there will be no engagement with the Cambodian government. Still, there is much to be done on human rights in Cambodia and a change to a special rapporteur role is a good way to transition into an effective mechanism for addressing human rights concerns. We conclude from the Japanese delegation's interaction with RGC officials that discussion about the upcoming mandate vote will be a delicate matter. Communication that includes the possible "incentives" for a special rapporteur mandate might work best: 1) Cambodia would be seen as graduating from the need for an SRSG; 2) a special rapporteur appointment process would be inclusive of Cambodia's input, or at least its consultation; 3) collaborative monitoring and reporting may be a way to help the RGC and donor community identify development priorities.

¶19. (C) We do not believe that the OHCHR Cambodia Office should be de-linked from the special procedure issue. OHCHR has been doing great work in line with its technical assistance mandate in Cambodia, and provides necessary support for the special procedure mandate. By de-linking the issue of the OHCHR Office, we would be delaying another conversation that would have to take place before March 2009 when the Office's mandate comes up for a vote. We believe that the part of the discussion with the RGC about the Office will be less strained -- the OHCHR Cambodia Office has the support of some high-level officials such as Deputy Prime Minister Sar Kheng.

¶10. (C) Finally, we agree that setting benchmarks may be a useful tool; the RGC may be encouraged by the designation of

certain achievable goals that would indicate the end of the need for a special procedure mandate. They would also provide an incentive for Cambodia to meet human rights standards. The successful completion of the KRT is a good example of an achievable, meaningful goal. The planned ASEAN Human Rights Mechanism might be another benchmark, though it has not yet made public its human rights principles. Other proposed benchmarks should be reviewed in the context of Cambodia's human rights situation and compared to the principles in the U.N. Declaration of Human Rights, to which Cambodia is a signatory, to ensure that some of Cambodia's most severe human rights issues -- such as the lack of rule of law, impunity for violent acts, and reduced press freedoms -- are addressed.

MUSSOMELI